**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**FARAD CONTINUATION SHEET**
**CIVIL APPLICATION NO.821 OF 1998**
**IN**
**FIRST APPEAL NO.1089 OF 2006**

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| Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders. | Court's or Judge's orders |
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**CORAM: A.S.OKA, J.**
**DATED: JULY 25, 2006.**

**P.C.:**

1. Heard Shri Barve for the Applicant. The challenge in this Appeal is to the impugned Judgment and Award made under the Motor Vehicles Act, 1939. The challenge is on the ground that the original Opponent No.2 who was driving the vehicle was not possessing the driving licence and that the vehicle was not validly insured with the Applicant on the date of the accident. It is not in dispute that the burden of establishing that a breach has been committed of the terms and conditions of the insurance policy was on the Applicant. The Applicant has led evidence of private Investigator appointed by it. The Tribunal after considering the

material on record came to the conclusion that the Applicant has failed to discharge the said burden.

2. Even if the Applicant succeeds in the Appeal on the said grounds, the Award against the insured will remain. Even if the compensation is paid by the Applicant to the claimant, in the event of success in the Appeal, the Applicant can always recover the compensation amount from the insured.

3. Subject to what is stated above, no case is made out for grant of stay. Application is rejected.

**Judge.**